



JOE D. TANNER
Commissioner

J. LEONARD LEDBETTER
Division Director

SITE: GE Poms
BREAK: 305
OTHER: 400

Department of Natural Resources

ENVIRONMENTAL PROTECTION DIVISION
270 WASHINGTON STREET, S.W.
ATLANTA, GEORGIA 30334

March 12, 1984

MEMORANDUM

TO: Texann Reid, EPA, Region IV
Waste Planning Section

FROM: John Taylor, Program Manager
Georgia EPD
Hazardous Waste Management Program *JS*

RE: Georgia's Final Authorization Application
Inquiries on 1) Georgia's Appeal Process
2) Georgia's Handling of Violations

Georgia's response to your request and discussions on March 8 and 9 on the above referenced items with Ms. Bettye Mokgoatsane of our staff is provided in two outlines below. This information should clarify the directives Georgia, as mandated by law, follows pertaining to your inquiries.

- A. Outline complete Process of Appeal for firms which have been issued orders.

Georgia's Appeal Process
(Contested Matters, Orders, Permits, etc.)

Authority: Georgia Hazardous Waste Management Act of 1979, Section 15
Georgia code annotated 12-8-73
(Guidance)

Appeal Process Pursuant to:

1. Executive Reorganization Act of 1972, Section 17(a)
Georgia code annotated 12-2-2(c)(2)
(Petition, Hearing, Administrative Review)
2. Georgia Administrative procedure Act, Section 3A-113, 3A-120
Georgia code annotated 50-13-13; 50-13-19(b-h)
(Judicial Review)
3. Appeals from Superior Court to Appellate per procedure



10525784

Page Two (2)
Texann Reid
March 12, 1984

NOTE: For future reference, if the need should arise, a copy of Georgia Administrative Act, Section 50-13-19(b-h) is being submitted.

B. Why two Notices of Violations may be issued.

Georgia's Handling of Violations
Proceedings Before The Director

Authority: Georgia Hazardous Waste Management Act of 1979, (Georgia Code Annotated 12-8-71) Section 13

1. Director attempts firstly to correct violation through conference, conciliation and persuasion.
2. Failure of above method, the Director may issue an Order.
3. Order final unless person requests in writing hearing pursuant to Section 15 of GHWA. [Georgia code annotated 12-8-73].

JDT:bmh:0937M

(2) For the purpose of investigating conditions relating to hazardous waste management or hazardous waste management practices where the Director is in possession of information sufficient to form a reasonable belief that a violation of this Act or the rules and regulations is occurring or is about to occur, or

(3) For the purpose of determining whether there has been a violation of any of the provisions of this Act, or the rules and regulations promulgated hereunder, or any permit or order issued pursuant to this Act and the rules and regulations.

In the event any person does not consent to an inspection or investigation, the Director or his authorized representative may seek to obtain a warrant authorizing the inspection or investigation.

Each such inspection or investigation shall be commenced and completed with reasonable promptness. If the Director or his authorized representatives obtain any samples prior to leaving the premises, he shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

Section 13. Proceedings Before the Director. Whenever the Director has reason to believe that a violation of any provision of this Act, or any rule or regulation of the Board, or any order of the Director has occurred, he shall attempt to remedy the same by conference, conciliation and persuasion. In case of failure of such conference, conciliation or persuasion to correct or remedy any violation, the Director may issue an order directed to such violator or violators. The order shall specify the provisions of the Act or rules or regulations or order alleged to have been violated and may order that necessary corrective action be taken within a reasonable time to be prescribed in the order. Any order issued by the Director under this Section of the Act shall be signed by the Director. Any such order shall become final unless the person or persons named therein request in writing a hearing pursuant to Section 15 of this Act.

Section 14. Application by Director for Injunctive Relief. Whenever in the judgment of the Director, any person has engaged in or is about to engage in any act or practice which constitutes or would constitute a violation of this Act or the rules and regulations, or any order or permit conditions, he may make application to the superior court of the county in which the violative act or practice has been or is about to be engaged in for an order enjoining such act or practice, or for an order requiring

ditions relating to hazardous management practices where the efficient to form a reasonable s and regulations is occurring

her there has been a violation rules and regulations promul- sued pursuant to this Act and

to an inspection or investiga- tive may seek to obtain a stigation.

shall be commenced and com- e Director or his authorized leaving the premises, he shall narge a receipt describing the n of each such sample equal in f any analysis is made of such is shall be furnished promptly e.

ector. Whenever the Director y provision of this Act, or any er of the Director has ocured, conference, conciliation and rence, conciliation or persua- e Director may issue an order order shall specify the provi- or order alleged to have been ctive action be taken within a er. Any order issued by the l be signed by the Director. e person or persons named nt to Section 15 of this Act.

Injunctive Relief. Whenever, n has engaged in or is about to titutes or would constitute a ations, or any order or permit e superior court of the county en or is about to be engaged in ice, or for an order requiring

compliance with the Act or the rules and regulations, or the order or permit condition, and upon a showing by the Director that such person has engaged in or is about to engage in any such violative act or practice, a permanent or temporary injunction, restraining order or other order shall be granted without the necessity of showing the lack of an adequate remedy at law.

Section 15. Hearings on Contested Matters; Judicial Review. All hearings on and review of contested matters, orders or permits, and all hearings on and review of any other enforcement actions or orders under this Act, shall be provided and conducted in accordance with the provisions of Section 17(a) of the "Executive Reorganization Act of 1972" (Ga. Laws 1972, pp. 1015 et seq.), as amended. The hearing and review procedure herein provided is to the exclusion of all other means of hearing or review.

Section 16. Judgment in Accordance with Final Orders. Any order of a hearing officer issued after a hearing as provided in Section 15 of this Act, or any order of the Director issued pursuant to Section 13 of this Act, either unappealed from as provided in those Sections, or affirmed or modified on any review or appeal pursuant to Section 15, and from which no further review is taken or allowed under Section 15, may be filed (as unappealed from or as affirmed or modified, if reviewed or appealed) by certified copy from the Director in the superior court of the county wherein the person under order resides, or if said person is a corporation in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred, whereupon said superior court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall be the same, as though said judgment had been rendered in a suit duly heard and determined by said court.

Section 17. Civil Penalties and Procedures for Imposing Such Penalties.

(1) **Civil Penalties.** Any person violating any provision of this Act or the rules or regulations effective hereunder, or any permit condition or limitation established pursuant to this Act, or negligently or intentionally failing or refusing to comply with any final or emergency order of the Director issued as provided in this Act, shall be liable for a civil penalty not to exceed twenty-five thousand dollars (\$25,000.00) per day. Each day during which the violation or failure or refusal to comply continues shall be a separate violation.

CHAPTER 13

ADMINISTRATIVE PROCEDURE

Sec.

- 50-13-1. Short title.
- 50-13-2. Definitions.
- 50-13-3. Adoption of rules of organization and practice; public inspection of rules, decisions, etc.; rules, decisions, etc., not effective until published.
- 50-13-4. Procedural requirements for adoption, amendment, repeal, etc., of rules; emergency rules; limitation on action to contest rule; legislative override.
- 50-13-5. Filing of previously adopted rules.
- 50-13-6. Rules not effective until filed with Secretary of State; procedure, exceptions, etc.
- 50-13-7. Secretary of State to publish compilation of rules.
- 50-13-8. Judicial notice of rules.
- 50-13-9. Petition for promulgation, amendment, repeal, etc., of rule.
- 50-13-10. Declaratory judgment on validity of rules; venue for actions.
- 50-13-11. Declaratory rulings by agencies.
- 50-13-12. Department of Revenue to hold hearing when demanded by

Sec.

- aggrieved taxpayer; election of remedies.
- 50-13-13. Procedure for contested cases; hearing, notice, counsel, subpoenas, record, etc.; authority of hearing officer; exceptions.
- 50-13-14. Intervention authorized.
- 50-13-15. Rules of evidence; official notice.
- 50-13-16. Proposal for decision; opportunity to present briefs, arguments, etc.
- 50-13-17. Initial decisions and review; final decisions and orders; Public Service Commission exceptions.
- 50-13-18. Grant, denial, renewal, revocation, etc., of licenses.
- 50-13-19. Judicial review of contested cases; venue, procedure, stay of agency decision, grounds, etc.
- 50-13-20. Review of final judgment.
- 50-13-21. Compliance with filing and hearing requirements by Safety Fire and Insurance Commissioners.
- 50-13-22. Construction of chapter.

Cross references. — As to monthly meetings of county boards of education, see § 20-2-58. As to administrative procedure before Department of Human Resources and county boards of health, see § 31-5-1 et seq. As to conducting of hearings by Insurance Commissioner, see

§ 33-2-17 et seq. As to administrative proceedings before Department of Human Resources and county boards of health pursuant to enforcement of mental health laws, see § 37-1-50 et seq. As to uniform property tax administration and equalization, see § 48-5-260 et seq.

50-13-1. Short title.

This chapter shall be known and may be cited as the "Georgia Administrative Procedure Act." It is not intended that this chapter create or diminish any substantive rights or delegated authority, but this chapter is meant to provide a procedure for administrative determination and

regulation where the Constitution or L. 1965, p. 283, §

Law reviews. — For consistency in state governing review of conduct in Georgia, prior to this chapter, see 15 Ga. article discussing procedural review of administrative Georgia prior to the chapter, see 15 Ga. l.

Intent of legislature this chapter administrative resolve conflicts within in administrative age statute without resort the first instance. C Dental Exmrs. v. Da 706, 224 S.E.2d 820

Civil Practice Act not applicable to this chapter. Georgia S Exmrs. v. Daniels, 11 S.E.2d 820 (1976).

Section 34-8-176 a derogation of common strictly construed. C Ga. App. 153, 262 S Review by admin

Purpose and intent to create additionalments in what is cause license by an administrative the purpose and intent provide uniform, requirements to be istrative agency in rights, duties, or p matter in which the ulates and to which 1965-66 Op. Att'y

Administrative revoke license of

does demand a hearing under this Code section shall be deemed to have elected the remedies provided in this Code section and in Code Section 50-13-19 as his exclusive remedies. (Ga. L. 1964, p. 338, § 13; Ga. L. 1965, p. 283, § 12.)

Cross references. — As to appeal to superior court from order, ruling, or finding of state revenue commissioner, see § 48-2-59.

Law reviews. — For article discussing and comparing the principal means by

which the Georgia taxpayer may obtain judicial review of his state tax liability with emphasis on the income tax and the sales tax, see 27 Mercer L. Rev. 309 (1975). For article, "A Practical Guide to State Tax Practice," see 15 Ga. St. B.J. 74 (1978).

JUDICIAL DECISIONS

Cited in Epstein v. Maddox, 277 F. Supp. 613 (N.D. Ga. 1967); Gainesville-Hall County Economic Opportunity Organization, Inc. v. Blackmon, 233 Ga. 507, 212 S.E.2d 341 (1975).

50-13-13. Procedure for contested cases; hearing, notice, counsel, subpoenas, record, etc.; authority of hearing officer; exceptions.

(a) In addition to any other requirements imposed by common law, constitution, statutes, or regulations:

(1) In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice served personally or by mail;

(2) The notice shall include:

(A) A statement of the time, place, and nature of the hearing;

(B) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(C) A reference to the particular section of the statutes and rules involved;

(D) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time, the notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished; and

(E) A statement as to the right of any party to subpoena witnesses and documentary evidence through the agency;

(3) Opportunity shall be afforded all parties to be represented by legal counsel and to respond and present evidence on all issues involved;

(4) Unless provided otherwise by any contested case, the hearing shall be held at the default;

(5) Unless specified otherwise by the agency, any co-representative who appears for the purpose. Before the hearing, the agency shall determine that the representative has the necessary training, experience,

(6) The agency shall authorize the hearing officer to do the following: administer oaths; rule upon objections; set the time and place of the hearing; dispose of motions to amend the hearing; by deposition or otherwise; hearing any matter committed in the hearing;

(7) Subpoena and private party shall apply to the subpoena being heard for such order shall costs of security mileage, shall be as prescribed by law

(8) A record shall be made of the hearing.

(A) All proceedings shall be recorded.

(B) A summary of the hearing shall be received or thereof shall be received. Upon written request of any party the agency shall provide a copy of the summary.

(C) A statement of the hearing shall be received.

(D) Questions of law shall be decided by the agency.

(E) Proposals for settlement shall be received.

(F) Any other matter (decision), and

be deemed to have
and in Code Section
338, § 13; Ga. L.

a taxpayer may obtain
his state tax liability with
income tax and the sales
L. Rev. 309 (1975). For
al Guide to State Tax
a. St. B.J. 74 (1978).

mon, 233 Ga. 507, 212

notice, counsel, sub-
officer; exceptions.

d by common law,

ded an opportunity
ally or by mail;

e of the hearing;
jurisdiction under

e statutes and rules

ers asserted. If the
ters in detail at the
the issues involved.
l detailed statement

subpoena witnesses

be represented by
ence on all issues

(4) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default;

(5) Unless specifically precluded by statute, in addition to the agency, any contested case may be held before any agency representative who has been selected and appointed by the agency for such purpose. Before appointing a hearing representative, the agency shall determine that the person under consideration is qualified by reason of training, experience, and competence;

(6) The agency, the hearing officer, or any representative of the agency authorized to hold a hearing shall have authority to do the following: administer oaths and affirmations; sign and issue subpoenas; rule upon offers of proof; regulate the course of the hearing, set the time and place for continued hearings, and fix the time for filing briefs; dispose of motions to dismiss for lack of agency jurisdiction over the subject matter or parties or for any other ground; dispose of motions to amend or to intervene; provide for the taking of testimony by deposition or interrogatory; and reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the agency or the hearing officer;

(7) Subpoenas shall be issued without discrimination between public and private parties. When a subpoena is disobeyed, any party may apply to the superior court of the county where the contested case is being heard for an order requiring obedience. Failure to comply with such order shall be cause for punishment as for contempt of court. The costs of securing the attendance of witnesses, including fees and mileage, shall be computed and assessed in the same manner as prescribed by law in civil cases in the superior court;

(8) A record shall be kept in each contested case and shall include:

(A) All pleadings, motions, and intermediate rulings;

(B) A summary of the oral testimony plus all other evidence received or considered except that oral proceedings or any part thereof shall be transcribed or recorded upon request of any party. Upon written request therefor, a transcript of the oral proceeding or any part thereof shall be furnished to any party of the proceeding. The agency shall set a uniform fee for such service;

(C) A statement of matters officially noticed;

(D) Questions and offers of proof and rulings thereon;

(E) Proposed findings and exceptions;

(F) Any decision (including any initial, recommended, or tentative decision), opinion, or report by the officer presiding at the hearing; and

(G) All staff memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case; and

(9) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(b) Except in cases in which a hearing has been demanded under Code Section 50-13-12, subsection (a) of this Code section and the other provisions of this chapter concerning contested cases shall not apply to any case arising in the administration of the revenue laws, which case is subject to a subsequent de novo trial of the law and the facts in the superior court. (Ga. L. 1964, p. 338, § 14; Ga. L. 1965, p. 283, § 13; Ga. L. 1982, p. 3, § 50.)

Cross references. — As to subpoenas generally, see § 24-10-20 et seq. As to conduct of hearings before Public Service Commission by hearing officers, see § 46-2-58.

Law reviews. — For article discussing and comparing the principal means by which a Georgia taxpayer may obtain judicial review of his state tax liability with emphasis on income and sales tax, see 27

Mercer L. Rev. 309 (1975).

For note, "Notice Requirements and the Entrapment Defense Under the Georgia Administrative Procedure Act" in light of *Schaffer v. State Bd. of Veterinary Medicine*, 143 Ga. App. 68, 237 S.E.2d 518 (1977), see 30 Mercer L. Rev. 347 (1978).

For comment on *Pope v. Cokinos*, 232 Ga. 425, 207 S.E.2d 63 (1974), see 26 Mercer L. Rev. 337 (1974).

JUDICIAL DECISIONS

The hearing provisions of this section are limited to contested cases, i.e., proceedings in which legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for a hearing. *Williams v. State Medical Educ. Bd.*, 149 Ga. App. 444, 254 S.E.2d 450 (1979).

Contesting of adoption agency's choice of adoptive parents by the child's foster parents is not a "contested case" within the meaning of this section, as the choice is entirely discretionary in nature. *Drummond v. Fulton County Dep't of Family & Children Servs.*, 237 Ga. 449, 228 S.E.2d 839 (1976), cert. denied, 432 U.S. 905, 97 S. Ct. 2949, 53 L. Ed. 2d 1077 (1977).

Fundamental requirement of subparagraph (a)(2)(D) of this section is notice calculated to apprise the party of each claim asserted so that he can prepare any defense he may have as to each charge. *Schaffer v. State Bd. of Veterinary Medicine*, 143 Ga. App. 68, 237 S.E.2d 510 (1977).

Respondent entitled to reasonable notice to conduct defense. — The law requires more than a mere assurance that a respondent in a disciplinary hearing will be afforded a future opportunity to rebut the case made against him. It requires that the respondent be given reasonable notice so that he can conduct his defense, including adequate and meaningful cross-examination of adverse witnesses, from the onset of the proceedings. *Schaffer v. State Bd. of Veterinary Medicine*, 143 Ga. App. 68, 237 S.E.2d 510 (1977).

Appellant not entitled to tape recording where transcript provided. — Where appellant is provided with a transcript of the administrative hearing, he is not entitled to the tape recording from which the transcript was prepared. *Nolen v. Department of Human Resources*, 151 Ga. App. 455, 260 S.E.2d 353 (1979).

Close scrutiny where prosecutor acts as legal advisor for hearing board. — When a prosecutor is also acting as the legal advisor for the hearing board, the court

must closely scrutinize between the two. Where prosecutor has prevailed in an unfair manner, should not be affirmed. *Bd. of Veterinary Medicine*, 68, 237 S.E.2d 510.

Entrapment shows defense in administrative hearing. — The professional license which could result in disbarment is engaged in that proceeding. *Bd. of Veterinary Medicine*, 68, 237 S.E.2d 510.

Purpose and intent to create additional requirements in what is a license by an administrative agency is not the purpose and intent to provide uniform requirements to be administered by an agency in rights, duties, or matter in which the agency regulates and to which the agency is subject. 1965-66 Op. Att'y Gen. 1.

Due process hearing before a license. — The due process clause of the Constitution, 14th Amendment, Art. I, Sec. 1, Paragraph 1, requires that any action may be taken by the state against this constitutional right, even though the right to revoke the license is appealable to the superior court. *Att'y Gen. p. 1.*

Law should govern hearing. — It is the law under which administrative proceedings are conducted and it is not sufficient that the hearing are governed by law.

1. **Conduct of**

the hearing officer
in consideration of

the evidence and on

anded under Code
and the other provi-
not apply to any case
h case is subject to
the superior court.
Ga. L. 1982, p. 3,

(1975).

Requirements and the
Under the Georgia
edure Act" in light of
l. of Veterinary Medi-
68, 237 S.E.2d 518
er L. Rev. 347 (1978).

Pope v. Cokinos, 232
2d 63 (1974), see 26
(1974).

itled to reasonable
defense. — The law
a mere assurance that a
iplinary hearing will be
opportunity to rebut the
im. It requires that the
n reasonable notice so
his defense, including
nd meaningful
of adverse witnesses,
e proceedings. Schaffer
erinary Medicine, 143
E.2d 510 (1977).

itled to tape recording
provided. — Where
d with a transcript of
hearing, he is not
recording from which
prepared. Nolen v.
nan Resources, 151 Ga.
2d 353 (1979).

here prosecutor acts as
earing board. — When
o acting as the legal
ring board, the court

must closely scrutinize the relationship be-
tween the two. Where it appears that the
prosecutor has prevailed upon the board in
an unfair manner, the board's decision
should not be affirmed. Schaffer v. State
Bd. of Veterinary Medicine, 143 Ga. App.
68, 237 S.E.2d 510 (1977).

Entrapment should be considered as
defense in administrative hearing where
the professional licensee is facing charges
which could result in the loss of his right to
engage in that profession. Schaffer v. State
Bd. of Veterinary Medicine, 143 Ga. App.
68, 237 S.E.2d 510 (1977).

Cited in Salerno v. Board of Dental
Exmrs., 119 Ga. App. 743, 168 S.E.2d 875
(1969); Pope v. Cokinos, 231 Ga. 79, 200
S.E.2d 275 (1973); Wall v. American
Optometric Ass'n, 379 F. Supp. 175 (N.D.
Ga. 1974); Georgia Real Estate Comm'n v.
Horne, 141 Ga. App. 226, 233 S.E.2d 16
(1977); Department of Natural Resources
v. American Cyanamid Co., 239 Ga. 740,
238 S.E.2d 886 (1977); Atlanta Gas Light
Co. v. Georgia Pub. Serv. Comm'n, 152 Ga.
App. 366, 262 S.E.2d 628 (1979); National
Council on Comp. Ins. v. Caldwell, 154 Ga.
App. 528, 268 S.E.2d 793 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Purpose and intent of this chapter is not
to create additional substantive require-
ments in what is cause for revocation of a
license by an administrative agency; rather,
the purpose and intent of the chapter is to
provide uniform, minimum procedural
requirements to be followed by an admin-
istrative agency in determining the legal
rights, duties, or privileges of a party, in
matter in which the particular agency reg-
ulates and to which the chapter applies.
1965-66 Op. Att'y Gen. No. 65-73.

Due process requires notice and
hearing before agency action to revoke
license. — The due process clauses of U.S.
Const., 14th amend. and Ga. Const. 1976,
Art. I, Sec. I, Para. I, require notice and a
hearing by an administrative agency before
any action may be taken to revoke a license;
this constitutional requirement must be
met, even though the Act granting the
right to revoke the license provides for an
appeal to the superior court. 1958-59 Op.
Att'y Gen. p. 1.

Law should prescribe notice and
hearing. — It is necessary that the law
under which administrative hearings are
conducted prescribe notice and hearing,
and it is not sufficient that a notice and
hearing are given, even though not
required by law. 1958-59 Op. Att'y Gen. p.
1.

Conduct of hearings in informal

manner. — With the passage of this chap-
ter the bell was tolled on the practice of
conducting hearings in an informal
manner except by stipulation of the parties,
agreed settlement, the entry of consent
orders, or defaults, 1965-66 Op. Att'y Gen.
No. 66-36.

Commissioner of Agriculture not obli-
gated to provide formal administrative
appeal. — The Commissioner of Agricul-
ture has neither a statutory nor a
constitutional obligation to provide a
formal means of administratively
appealing the decision to bar a party from
a state-owned and regulated farmers'
market. 1965-66 Op. Att'y Gen. No.
66-217.

Administrative agency may proceed to
revoke license of licensee in conformity
with this chapter and the fact that the
licensee shows at the agency's proceedings
that he is momentarily complying with all
lawful requirements for the retention of his
license, would be immaterial; the real ques-
tion to be resolved by the agency's pro-
ceedings would be whether the licensee had
been in noncompliance with all lawful
requirements for the retention of his
license at the time that the licensee is
alleged to have been in noncompliance with
such requirements. 1965-66 Op. Att'y Gen.
No. 65-73.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 398 et seq., 430, 434 et seq.

C.J.S. — 73 C.J.S., Public Administrative Bodies and Procedure, §§ 130, 131, 140, 153.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 9.

ALR. — Administrative decision or finding based on evidence secured outside of hearing, and without presence of interested party or counsel, 18 ALR2d 552.

Administrative decision by officer not present when evidence was taken, 18 ALR2d 606.

Power of administrative agency, in investigation of nonjudicial nature, to issue subpoenas against persons not subject to agency's regulatory jurisdiction, 27 ALR2d 1208.

Waiver of, or estoppel to assert, failure to give required notice of claim of injury to

municipality, county, or other governmental agency or body, 65 ALR2d 1278.

Revocation of teacher's certificate for moral unfitness, 97 ALR2d 827.

Effectiveness of stipulation of parties or attorneys, notwithstanding its violating form requirements, 7 ALR3d 1394.

Failure to give notice of application for default judgment where notice is required only by custom, 28 ALR3d 1383.

Right to assistance by counsel in administrative proceedings, 33 ALR3d 229.

Sufficiency of notice or hearing required prior to termination of welfare benefits, 47 ALR3d 277.

Necessity of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 ALR3d 361.

Sufficiency of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 ALR3d 427.

50-13-14. Intervention authorized.

In contested cases:

(1) Upon timely application, any person shall be permitted to intervene when a statute confers an unconditional right to intervene or when the representation of applicant's interest is or may be inadequate; or

(2) Upon timely application, any person may be permitted to intervene when a statute confers a conditional right to intervene or when the applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion, the agency shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of existing parties. (Ga. L. 1964, p. 338, § 15; Ga. L. 1965, p. 283, § 14.)

Cross references. — As to intervention in proceedings before Public Service Commission, see § 46-2-59.

Cited in N. v. Caldwell, 793 (1980).

50-13-15.

In cont

(1) In exclude cases in tain fac dence preclud ably pr report routine course recogn shall t hearir prejud writte

(2) excer shall have evide

(3) for a

(4) addi or s shall prel staff con cor tior §§

ARTICLE 1 GENERAL PROVISIONS

Law reviews. — For article discussing and game and fish law in 1976 and 1977, important cases applying natural resource see 29 Mercer L. Rev. 131 (1977).

12-2-1. Department created; position of commissioner of natural resources created; appointment and removal of commissioner; powers and duties of commissioner generally.

(a) There is created a Department of Natural Resources.

(b) There is created the position of commissioner of natural resources. The commissioner shall be both appointed and removed by the Board of Natural Resources subject to approval of the Governor. Subject to the general policy established by the Board of Natural Resources, the commissioner shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the Department of Natural Resources by this article. (Ga. L. 1911, p. 137, § 1; Ga. L. 1921, p. 192, §§ 1, 4; Ga. L. 1924, p. 101, §§ 1, 3, 4; Ga. L. 1925, p. 199, § 1; Ga. L. 1931, p. 7, §§ 19, 21, 25; Ga. L. 1937, p. 264, §§ 1, 4, 5, 9; Ga. L. 1943, p. 128, §§ 1, 2, 14; Ga. L. 1943, p. 180, §§ 1-3; Ga. L. 1949, p. 1079, §§ 1, 2, 5; Ga. L. 1955, p. 483, § 3; Ga. L. 1972, p. 1015, §§ 1501-1504, 1527.)

12-2-2. Creation of Environmental Protection Division; appointment and removal of director; qualifications of director; inclusion of director in unclassified service; powers and duties of director generally; authority of director to issue orders and to grant, deny, etc., permits and variances; hearings before Administrative Review Committee concerning orders and actions of director; judicial review.

(a) There is created within the Department of Natural Resources an Environmental Protection Division.

(b) The division shall have a director, who shall be both appointed and removed by the Board of Natural Resources with the approval of the Governor. The director shall be a qualified professional, competent in the field of environmental protection. The director may be in the unclassified service. The director shall be responsible for enforcing the environmental protection laws of Georgia. The director shall hire the personnel for the division and shall supervise, direct, account for, organize, plan, and execute the functions vested in the division.

(c) (1) The director shall issue all orders and shall grant, deny, revoke, or amend all permits or variances provided for in the laws to be enforced by the division.

(2) Any p
or action of
issuance of
hearing befo
hearing and
accordance
Procedure A
hearing offic
Administrati
shall be me
selected by tl
for a particu
interest requ
Federal Wa
rules, regula
son who has
is aggrieved
board shall l
subsections
proceeding
court by ap
from superi
p. 1015, §§
§ 2; Ga. L.

Division resp
managing solid
Management Act
the responsibility

Am. Jur. 2d. —
Control, § 115.
Officers and Em
C.J.S. — 39A
ronment, § 133

12-2-3. Obj

It shall be

(1) To h
Division of

in 1976 and 1977,
131 (1977).

ner of natural
of commissioner;

ources.

natural resources.
d by the Board of
r. Subject to the
sources, the com-
plan, administer,
Natural Resources
192, §§ 1, 4; Ga.
Ga. L. 1931, p. 7,
943, p. 128, §§ 1,
9, §§ 1, 2, 5; Ga.
504, 1527.)

ion; appointment
ector; inclusion of
duties of director
lers and to grant,
efore Administra-
s and actions of

ural Resources an

both appointed and
he approval of the
al, competent in the
: in the unclassified
rforcing the envi-
tor shall hire the
, account for, orga-
division.

grant, deny, revoke,
in the laws to be

(2) Any person who is aggrieved or adversely affected by any order or action of the director shall, upon petition within 30 days after the issuance of such orders or notice of such action, have a right to a hearing before a hearing officer appointed by the board. The initial hearing and any administrative review thereof shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any administrative review of the initial decision by the hearing officer shall be by a five-member committee to be known as the Administrative Review Committee. The members of this committee shall be members of the Board of Natural Resources and shall be selected by the board; provided, however, that all members so selected for a particular review shall fully meet and qualify as to the conflict of interest requirements provided for in Section 304(h) (2) (D) of the Federal Water Pollution Control Act of 1972, as amended, and the rules, regulations, and guidelines promulgated thereunder. Any person who has exhausted all administrative remedies available and who is aggrieved or adversely affected by any final order or action of the board shall have the right of judicial review thereof in accordance with subsections (b) through (h) of Code Section 50-13-19. Any party to the proceeding may secure a review of the final judgment of the superior court by appeal in the manner and form provided by law for appeals from superior courts to the appellate courts of this state. (Ga. L. 1972, p. 1015, §§ 17, 1534; Ga. L. 1972, p. 1266, § 1; Ga. L. 1973, p. 344, § 2; Ga. L. 1981, p. 838, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Division responsible for handling and managing solid waste. — The Solid Waste Management Act (Ch. 8 of this title) places the responsibility and power to regulate

solid waste handling and management in Georgia in the hands of the Environmental Protection Division. 1976 Op. Att'y Gen. No. 76-17.

RESEARCH REFERENCES

Am. Jur. 2d. — 61 Am. Jur. 2d, Pollution Control, § 115. 63 Am. Jur. 2d, Public Officers and Employees, §§ 30, 31, 105.
C.J.S. — 39A C.J.S., Health and Environment, § 133. 73 C.J.S., Public Admin-

istrative Bodies and Procedure, §§ 7, 11.
ALR. — Conclusiveness of governor's decision in removing or suspending officers, 92 ALR 998.

12-2-3. Objects of department.

It shall be the objects of the department:

(1) To have the powers, duties, and authority formerly vested in the Division of Conservation and the commissioner of conservation;

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, §§ 58 et seq.

C.J.S. — 53 C.J.S., Licenses, §§ 34, 38, 39, 42, 43, 44.

U.L.A. — Model State Administrative

Procedure Act (U.L.A.) § 14.

ALR. — Constitutionality of license statute or ordinance as affected by delegation of authority as to amount of bond of licensee, 107 ALR 1506.

50-13-19. Judicial review of contested cases; venue, procedure, stay of agency decision, grounds, etc.

(a) Any person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. This Code section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(b) Proceedings for review are instituted by filing a petition within 30 days after the service of the final decision of the agency or, if a rehearing is requested, within 30 days after the decision thereon. The petition may be filed in the Superior Court of Fulton County or in the superior court of the county of residence of the petitioner. When the petitioner is a corporation, the action may be brought in the Superior Court of Fulton County or in the superior court of the county where the petitioner maintains its principal place of doing business in this state. All proceedings for review, however, with respect to orders, rules, regulations, or other decisions or directives of the Public Service Commission must be brought in the Superior Court of Fulton County. Copies of the petition shall be served upon the agency and all parties of record. The petition shall state the nature of the petitioner's interest, the fact showing that the petitioner is aggrieved by the decision, and the ground as specified in subsection (h) of this Code section upon which the petitioner contends that the decision should be reversed or modified. The petition may be amended by leave of court.

(c) Irrespective of any provisions of statute or agency rule with respect to motions for rehearing or reconsideration after a final agency decision or order, the filing of such a motion shall not be a prerequisite to the filing of any action for judicial review or relief; provided, however, that no objection to any order or decision of any agency shall be considered by the court upon petition for review unless such objection has been urged before the agency.

(d) The filing of the petition does not itself stay enforcement of the agency decision. Except as otherwise provided in this subsection, the

agency may grant, or the appropriate terms for good cause to practice medicine or the reviewing court may order the court or agency may order the welfare will not be harmed.

(e) Within 30 days after the time allowed by the court for the original or a certified copy under review. By stipulation the record may be shortened. The court may require or the record may be shortened.

(f) If, before the decision for leave to present a case of the court that the reasons for failure to present a court may order that upon conditions determined by the court findings and decision that evidence and argument reviewing court.

(g) The review shall be confined to the record before the agency, if the review is in the court. The court shall receive written briefs.

(h) The court shall state as to the weight of the evidence to affirm the decision or proceedings. The court shall state the rights of the appellant and the findings, inferences

- (1) In violation of
- (2) In excess of
- (3) Made up of
- (4) Affected by
- (5) Clearly material evidence

U.L.A.) § 14.

stitutionality of license state-
e as affected by delegation
to amount of bond of
LR 1506.

ue, procedure, stay of

ative remedies avail-
a final decision in a
nis chapter. This Code
udicial review available
l de novo provided by
gency action or ruling
ncy decision would not

ing a petition within 30
ency or, if a rehearing
eon. The petition may
in the superior court
en the petitioner is a
erior Court of Fulton
where the petitioner
in this state. All pro-
ers, rules, regulations,
e Commission must be
Copies of the petition
f record. The petition
e fact showing that the
ground as specified in
ie petitioner contends
The petition may be

gency rule with respect
a final agency decision
a prerequisite to the
provided, however, that
cy shall be considered
ch objection has been

ty enforcement of the
n this subsection, the

agency may grant, or the reviewing court may order, a stay upon appropriate terms for good cause shown. In contested cases involving a license to practice medicine or a license to practice dentistry in this state, a reviewing court may order a stay or an agency may grant a stay only if the court or agency makes a finding that the public health, safety, and welfare will not be harmed by the issuance of the stay.

(e) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(f) If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and there were good reasons for failure to present it in the proceedings before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(g) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(h) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. (Ga. L. 1964, p. 338, § 20; Ga. L. 1975, p. 404, § 8; Ga. L. 1977, p. 316, § 1; Ga. L. 1978, p. 1362, § 1; Ga. L. 1980, p. 820, § 1.)

Law reviews. — For article discussing and comparing the principal means by which a Georgia taxpayer may obtain judicial review of his state tax liability with emphasis on income and sales tax, see 27 Mercer L. Rev. 309 (1975). For article sur-

veying Georgia cases dealing with environment, natural resources, and land use from June 1977 through May 1978, see 30 Mercer L. Rev. 75 (1978). For article, "A Practical Guide to State Tax Practice," see 15 Ga. St. B.J. 74 (1978).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
PREREQUISITES TO JUDICIAL REVIEW
SCOPE OF JUDICIAL REVIEW
SUFFICIENCY OF EVIDENCE

General Consideration

Presentation of additional evidence constitutes reversible error in absence of waiver. — Where the claimant does not agree that the superior court could consider additional evidence, such as personnel records, and thereby waive the requirement of subsection (f) of this section, as to an application made to the court for leave to present additional evidence, and where counsel for the commissioner did not waive the requirement of the law but specifically pointed out that the case should be remanded to the board of review for purposes of introduction of such additional evidence, including personnel records, there has been no waiver of the requirement of subsection (f) of this section, and the presentation of additional evidence constitutes reversible error. *Caldwell v. Corbin*, 152 Ga. App. 153, 262 S.E.2d 516 (1979).

Provisions of this section do not repeal second requirement for issuance of writ of mandamus that there must be no other adequate remedy. *Carnes v. Crawford*, 246 Ga. 677, 272 S.E.2d 690 (1980).

There is statutory right to obtain judicial review of order of Insurance Commissioner determining the workers' compensation insurance rates under

§ 34-9-130. *National Council on Comp. Ins. v. Caldwell*, 154 Ga. App. 528, 268 S.E.2d 793 (1980).

Agency action does not violate statutory provisions or exceed statutory authority. — Suspension of a real estate broker's license may be for a period greater than the unexpired portion of the license, and such action by the real estate commission is neither in violation of statutory provisions nor in excess of the statutory authority of the agency. *Georgia Real Estate Comm'n v. Howard*, 133 Ga. App. 199, 210 S.E.2d 357 (1974).

Presumption that judge made required findings. — Whenever a superior court judge is required by law to make certain findings in order to return a verdict, the presumption is that he has made the required findings, absent a showing to the contrary. This presumption applies even if the required findings are not specifically set out in the order. *Burson v. Collier*, 226 Ga. 427, 175 S.E.2d 660 (1970).

Adverse judgment of court may be appealed by agency party. — The State Board of Pharmacy, being an agency which is also defined as a party, has the authority to appeal an adverse judgment of the superior court. *Georgia State Bd. of Pharmacy v. Vennett*, 126 Ga. App. 307, 190 S.E.2d 788 (1972).

Failure to label or objectionable. — The court affirming the annihilation of the Department of Resources was not on ground that it was not *Nolen v. Department of Resources*, 151 Ga. App. 353 (1979).

Cited in *Epstein v. 1615 (N.D. Ga. 1967); Dental Exmrs.*, 119 S.E.2d 875 (1969); *Bu 526*, 181 S.E.2d 82 *Webb*, 125 Ga. App. (1972); *Department 127 Ga. App. 190*, 1 *Freeman v. Departu Ga. App. 773*, 195 S. *v. Department of Pu 490*, 197 S.E.2d 4 *Harden*, 129 Ga. App. (1973); *Clark v. Comm'n*, 129 Ga. App. (1973); *Graham v Practical Nurses*, 1 S.E.2d 385 (1974); *Optometric Ass'n, Ga. 1974*); *Gaine: nomic Opportunit Blackmon*, 233 G (1975); *Georgia P Corp.*, 233 Ga. 551 *Tellis v. Saucier*, S.E.2d 39 (1975) *Ga. App. 416*, *Hinson v. Georg Exmrs.*, 135 Ga. (1975); *Pfeffer Safety*, 136 Ga. (1975); *Turner 842*, 222 S.E.2d *Corp. v. Georgi 224 S.E.2d 396* *cations Corp. v. 139 Ga. App. 4*; *Hawthorn En Ass'n v. Colema Ga. 1976*); *Geo Horne*, 141 Ga (1977); *Cofer v 247 S.E.2d 586 Ga. App. 549 Courts v. Econ Savannah-Cha*